

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

11-CR-6152L

v.

JOSE BENITEZ-GOMEZ,

Defendant.

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Defendant Jose Benitez-Gomez (“Benitez-Gomez”) submitted, *pro se*, a one-page letter to the Court (Dkt. #47) seeking a determination as to whether he was eligible for a sentence reduction pursuant to the First Step Act, effective December 21, 2018. The Court has liberally construed that as a request for such relief.

The Government duly filed a Response (Dkt. #50) urging the Court to deny the defendant relief because he is ineligible for any type of relief under the Act. After reviewing the parties’ submissions, I agree with the Government’s position and, therefore, deny in all respects defendant’s motion (Dkt. #47) for relief under the First Step Act.

In February 2012, pursuant to a Plea Agreement the defendant pleaded guilty to Counts 1 and 4 of the Indictment. Count 1 charged conspiracy to import 500 grams or more of cocaine and Count 4 charged illegal reentry into the United States by an alien who had been previously removed. The time period alleged in the conspiracy was between April and June 2011. The defendant was sentenced by this Court in November 2012, principally to a term of imprisonment of 156 months.

The relevant sections of the First Step Act deal with modifications concerning sentencing for possession and distribution of cocaine base. Defendant here, though, was found guilty relating to trafficking in cocaine, not cocaine base, and therefore the First Step Act affords no relief to one so sentenced. *United States v. Carbe*, 797 F. App'x 901 (5th Cir. 2020). Although the defendant here was charged in the Indictment with an offense involving cocaine base, he was not convicted of that charge.

Next, as the Government points out the Act applies, by its terms, to offenses committed before August 3, 2010. This defendant, however, committed his drug offense after that date and therefore he is ineligible for relief under the First Step Act on this basis as well.

#### CONCLUSION

Defendant Jose Benitez-Gomez's request/motion (Dkt. #47) for relief in reduction of sentence pursuant to the First Step Act is in all respects DENIED.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
July 1, 2020.